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NEW APPLICATION

IE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF THE JOINT
APPLICATION BETWEEN CITIZENS
UTILITIES COMPANY, INC. AND CAP
ROCK ENERGY CORPORATION FOR THE
APPROVAL OF THE SALE OF CERTAIN
ELECTRIC UTILITY PROPERTIES IN
ARIZONA AND THE TRANSFER OF THE
CERTIFICATE OF CONVENIENCE AND
NECESSITY FROM CITIZENS AND THE
ARIZONA ELECTRIC DIVISION TO CAP
ROCK ENERGY.

DOCKET NO. E-01032A-00- 0163
E-01032B-00- 0163
E-01032C-00- 0163
E-~~E-13851A~~00- 0163

JOINT APPLICATION

Under authority of ARS §§40-282, 40-285 and Arizona Administrative Code §§ R14-2-202 and R14-2-212.E Citizens Utilities Company ("Citizens"), a Delaware corporation, and Cap Rock Energy Corporation ("Cap Rock"), a Texas corporation, hereby submit this Joint Application to the Arizona Corporation Commission for approval of the sale of certain electric utility properties in Arizona and the transfer of the Certificate of Convenience and Necessity ("CC&N") from Citizens and its Arizona Electric Division to Cap Rock. This Joint Application is supported by the following statement of facts:

I. Description of the Applicants

Citizens is a diversified public service corporation as defined in Article 15, Section 2 of the Arizona Constitution and as such, is presently regulated by the Commission. Citizens provides, through its various operating divisions or subsidiaries, telecommunications, electric, gas, water and wastewater services to approximately 1.8 million customers in 22 states, including Arizona. Under the authority of its CC&N, issued by the Commission, Citizens through its Arizona

1 Electric Division provides electric utility services to Arizona customers located in
2 Mohave and Santa Cruz Counties.

3 Cap Rock is a wholly owned subsidiary of Cap Rock Electric Cooperative,
4 Inc. ("Co-op"), an electric cooperative organized under the laws of the State of
5 Texas. The Co-op was formed in 1939 and has since merged with three electric
6 cooperatives; a merger with another Texas cooperative is pending. After the
7 pending merger is completed, the Co-op will be serving approximately 44,000
8 customers in 31 counties in West, Central and Northeast Texas. In addition, the
9 Co-op provides services to 1500 customers as an agent for a Texas municipal
10 utility. In the year 2000, the Co-op will deliver approximately one billion
11 kilowatt-hours of electricity to its customers, utilizing its 13,500-mile
12 transmission and distribution network. The Co-op has an outstanding record as a
13 reliable and competitively priced provider of electricity to consumers in rural and
14 ex-urban areas.

15 **II. Description of the Transaction**

16 On February 15, 2000, Cap Rock and Citizens entered into an Asset
17 Purchase Agreement ("Agreement") that sets forth the terms and conditions for
18 the sale and purchase of the electric utility properties of Citizens' Arizona Electric
19 Division.¹ Under the Agreement, and upon satisfaction of the stated conditions to
20 the parties' obligations – including approval by this Commission – Citizens will
21 convey to Cap Rock its electric utility properties in Mohave County and Santa
22 Cruz County. Cap Rock will then assume (with stated exceptions) the electric
23 utility properties, rights, obligations, and related public service obligations of
24 Citizens' Arizona Electric Division in Mohave County and Santa Cruz County. As
25 one of those obligations, Cap Rock will assume Citizens' obligations with respect
26 to the Santa Cruz Transmission Line Project.

27
28 ¹ Cap Rock and Citizens simultaneously entered into another agreement under which Cap Rock
29 will purchase from Citizens the electric utility properties of Citizens' Vermont Electric Division;
that transaction is subject to approval by the Public Service Board of the State of Vermont.

1 Citizens is presently negotiating to sell its natural-gas utility properties.
2 Disclosure of the terms of the Agreement to potential purchasers could affect the
3 ability of Citizens to negotiate the best terms for such sales. Accordingly,
4 Applicants will provide a copy of the executed Agreement to the Commission's
5 Utilities Division Staff and other parties to this proceeding upon execution of a
6 mutually acceptable confidentiality agreement. After Citizens announces the sale
7 of its last natural-gas utility property, Applicants will file a copy of the Agreement
8 in this docket.

9 **III. Why the Transaction is Occurring**

10 Like the telecommunications utility industry before it, the electric utility
11 industry is being partially deregulated, with many previously regulated businesses
12 being opened up to competition. In response to deregulation, electric utilities are
13 evaluating their core competencies, adopting new strategies to succeed in the
14 emerging electric marketplace, and often restructuring their operations to
15 accommodate these changes. Some will focus on the largely competitive
16 generation market. Others will focus on transmission. Still others will remain
17 local distribution companies.

18 Cap Rock's parent, the Co-op has demonstrated that its core competency is
19 distributing reliable, competitively priced electricity to largely rural and non-
20 metropolitan customers. Further, Cap Rock believes it can replicate the success
21 that it has experienced in Texas in other jurisdictions. As a result of the electric-
22 utility industry's restructuring, certain utilities, such as Citizens, have determined
23 that they wish to focus somewhere other than the local electricity distribution
24 business. This has created acquisition opportunities for those, like Cap Rock, that
25 wish to remain focused on this business.

26 Financial and structural limitations prevent cooperatives from acting quickly
27 to respond to the challenges and opportunities arising from increasing
28 competition and restructuring. For this reason, the Co-op's members have
29

1 authorized the Co-op's Board of Directors to create Cap Rock, to transfer the Co-
2 op's assets to Cap Rock, and to dissolve the Co-op. Cap Rock anticipates that
3 this process - the "conversion" - will be complete before the financial close of the
4 Cap Rock - Citizens transaction.

5 **IV. The Transaction is in the Public Interest**

6 **A. Cap Rock is Committed to Excellent Electric Distribution** 7 **Service.**

8 As just discussed, many utilities are responding to fundamental changes in
9 their formerly regulated businesses by restructuring their operations. For
10 example, Citizens is in the process of selling its electric, gas, water and
11 wastewater-utility properties nationwide in order to concentrate its efforts toward
12 providing communications services in rural and small-town markets. Similarly,
13 Cap Rock has determined that it will focus on the electric-utility distribution
14 business in comparable markets. Particularly during this era of electric utility
15 industry restructuring, the public interest will be better served if electric utility
16 properties are owned and operated by an entity whose efforts will be
17 concentrated in the electric utility sector.

18 Cap Rock is committed to the electric utility sector, and, in particular, to the
19 local furnishing of electricity and related electric distribution services at the
20 community level.² The Co-op, currently Cap Rock's parent, has an outstanding
21 record as a reliable and competitively priced provider of electricity to end-use
22 consumers. It is financially sound and dedicated to providing customers high
23 quality community-based service at reasonable rates. As a utility with more than
24 60-years' experience in serving rural, suburban, and small city markets in Texas,
25 it has the operating personnel and management experience necessary to serve
26 the types of electric markets found in Mohave and Santa Cruz counties. For
27

28
29 ² Cap Rock will own, and will acquire from Citizens, only incidental generation and transmission
assets necessary to the performance of the utility's distribution function.

1 these reasons, Cap Rock is fit, willing, and able to hold the CC&N and to be
2 authorized to provide electric utility service to customers in Mohave County and
3 Santa Cruz County.

4 **B. Cap Rock Will Operate an Arizona Utility to Serve Arizonans.**

5 Cap Rock will own and operate its electric utility properties in Arizona as a
6 division of Cap Rock and not as a subsidiary. Cap Rock will do so under a
7 separate division name (i.e., "XYZ Electric, a division of Cap Rock Energy
8 Corporation .") Cap Rock will support the management and employees of the
9 Arizona Electric Division, to allow them to support all their "customers," including:
10 the local communities that the Arizona Electric Division will serve in Mohave
11 County and Santa Cruz County; this Commission; other Arizona public officials
12 and agencies with jurisdiction over the Arizona Electric Division; and the broader
13 public and community of Arizona.

14 The Purchase and Sale Agreement between Cap Rock and Citizens requires,
15 and Cap Rock readily agreed, that it shall "employ all Active Employees of
16 [Citizens] employed in the Business being acquired ... in the same comparable
17 positions, and at the same compensation level ... as were in effect with [Citizens]
18 immediately prior to the Closing Date." Cap Rock therefore hopes and expects to
19 retain all Citizens' management and operating employees currently employed to
20 provide electric service in Mohave and Santa Cruz Counties. This will assure a
21 smooth transition and continuation of service by knowledgeable employees.

22 **C. Cap Rock Will Have Adequate Financial Resources.**

23 Cap Rock's acquisition of the electric utility properties of Citizens' Arizona
24 Electric Division will be financed largely by the National Cooperative Services
25 Corporation ("NCSC"), a subsidiary of the National Rural Utilities Cooperative
26 Finance Corporation ("CFC"). NCSC provided Cap Rock a Letter of Credit
27 sufficient to meet the down payment required by the Agreement, and, in addition,
28 NCSC has agreed to provide Cap Rock (1) a long-term loan for the acquisition
29

1 itself, (2) working capital for the post-closing period, and (3) additional funds for
2 up to three years of post-closing capital improvements.

3 A condition of NCSC's loan commitment is that Cap Rock specifically bring
4 to the Commission's attention, and that the Commission recognize in its order
5 approving this transaction, that Cap Rock's loan covenants include NCSC's
6 minimum debt service coverage ("MDSC") requirement. The significance of this
7 requirement is that, although Cap Rock is an investor-owned utility, its capital
8 structure for the Arizona division will be more like that of a CFC-financed electric
9 cooperative, with which the Commission is familiar.

10 **D. The Transaction Will Not Affect Rates and Tariffs.**

11 Cap Rock will operate the acquired electric utility properties in accordance
12 with all the rules and orders issued by the Commission and will adopt and provide
13 service in accordance with the tariffs of Citizens in effect at the time of the
14 closing. Cap Rock requests authorization to charge the rates and charges
15 existing in the tariffs of Citizens at the time of closing, until such time that Cap
16 Rock makes an application and the Commission approves changes in those rates
17 and charges.

18 **E. Customers Will Be Notified of the Transaction.**

19 Citizens will notify its electric utility customers in Mohave County and Santa
20 Cruz County of this Joint Application by a bill insert, and will file an affidavit
21 confirming that notice has been provided as soon as the mailing has been
22 completed.

23 Cap Rock has already met with local officials in Mohave and Santa Cruz
24 Counties to explain the proposed transaction and discuss its locally focused
25 management style.
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1 **V. Articles of Incorporation**

2 Cap Rock is currently incorporated under the laws of the State of Texas (as
3 is the Co-op). A copy of Cap Rock's Articles of Incorporation is attached to this
4 Joint Application as Exhibit A. A copy of the Co-op's Articles of Incorporation is
5 attached as Exhibit B.

6 **VI. Requested Relief**

7 Applicants ask the Commission to approve this transaction at the earliest
8 convenient date, but in no event later than November 1, 2000, in order to
9 accommodate a closing date for the transaction by year-end. Early Commission
10 action on this Joint Application will minimize uncertainty for employees and
11 customers, and, by shortening the transition period, make communications
12 among the Applicants and the Commission both smoother and more efficient.


13 RESPECTFULLY SUBMITTED on March 10, 2000.

14 **CITIZENS UTILITIES COMPANY**

15 

16 Craig A. Marks
17 Associate General Counsel
18 2901 North Central Avenue, Suite 1660
19 Phoenix, Arizona 85012
20 (602) 532-4433
21 Fax: (602) 265-3415

22 **CAP ROCK ENERGY CORPORATION**

23 
24 Michael C. Dotten
25 HELLER, EHRMAN, WHITE & McAULIFFE, LLP
26 200 S.W. Market Street, Suite 1750
27 Portland, OR 97201-5718
28 (503) 795-7420
29 Fax (503) 241-0950
Attorneys for Cap Rock Energy Corporation
and Cap Rock Electric Cooperative

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28 (503) 795-7420
29 Fax (503) 241-0950
Attorneys for Cap Rock Energy Corporation
and Cap Rock Electric Cooperative

1 Original and ten copies filed on
2 March 10, 2000, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

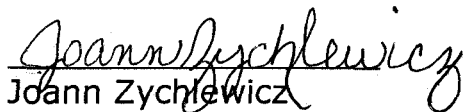
7 Copies of the foregoing mailed/delivered
8 on March 10, 2000, to:

9 Deborah R. Scott
10 Utilities Division Director
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007

14 Jerry Rudibaugh
15 Chief Hearing Officer
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

19 Lyn Farmer
20 Chief Counsel
21 Arizona Corporation Commission
22 1200 West Washington
23 Phoenix, Arizona 85007

24 By:


Joann Zychlewicz

25 G:\Craig~docs\Az Electric Divest\ACC Application--Final.doc

EXHIBIT A

CAP ROCK ENERGY CORPORATION
ARTICLES OF INCORPORATION

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ARTICLES OF INCORPORATION
OF
CAP ROCK ENERGY CORPORATION

FILED
In the Office of the
Secretary of State of Texas

DEC 10 1998

Corporations Section

I, the undersigned natural person of the age of eighteen (18) years or more, acting as incorporator of a corporation under the Texas Business Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation.

ARTICLE ONE

Name

The name of the corporation is Cap Rock Energy Corporation.

ARTICLE TWO

Duration

The period of duration of the corporation is perpetual.

ARTICLE THREE

Purposes

The purpose for which the corporation is organized is to engage in the transaction of any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.

ARTICLE FOUR

Capital

The aggregate number of shares of capital stock that the corporation shall have authority to issue is 50,000,000. All of such shares shall be of the par value of one cent (\$.01) per share, shall be of the same class, and shall be designated as "Common Stock."

ARTICLE FIVE
Commencement of Business

The corporation will not commence business until it has received for the issuance of its shares consideration of the value of One Thousand Dollars (\$1,000.00), consisting of money, labor done, or property actually received.

ARTICLE SIX
Denial of Preemptive Rights

No shareholder shall have, as a shareholder of the corporation, any preemptive right to acquire, purchase, or subscribe for the purchase of any unissued or treasury shares of any class of stock of the corporation, whether now or hereafter authorized, or any bonds, debentures or other securities of the corporation convertible into or exchangeable for, or carrying or accompanied by any rights to acquire, purchase, or subscribe for the purchase of, any such unissued or treasury shares.

ARTICLE SEVEN
Denial of Cumulative Voting

Cumulative voting in the election of directors or otherwise is hereby expressly prohibited.

ARTICLE EIGHT
Voting Limitations

No person or entity will be permitted to vote in any election more than five percent (5%) of all outstanding stock in the corporation regardless of the number of shares of stock in the corporation that is owned or controlled by that person and/or entity.

ARTICLE NINE
Indemnification

The corporation shall indemnify any person who was, is, or is threatened to be made a named defendant or respondent in a proceeding (as hereinafter defined) because the person (a) is or was a director or officer of the corporation or (b) while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, to the fullest extent that a corporation may grant indemnification to a director under the Texas Business Corporation Act, as the same exists or may hereafter be amended.

Such right shall be a contract right and shall include the right to be paid by the corporation expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the Texas Business Corporation Act, as the same exists or may hereafter be amended. If a claim for indemnification or advancement of expenses hereunder is not paid in full by the corporation within 90 days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall be entitled to be paid also the expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the Texas Business Corporation Act, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors or any committee thereof, special legal counsel, or shareholders) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the corporation (including its Board of Directors or any committee thereof, special legal counsel, or shareholders) that such indemnification or advancement is not permissible, shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible.

The corporation may additionally indemnify any person covered by the grant of mandatory indemnification contained above to such further extent as is permitted by law and may indemnify any other person to the fullest extent permitted by law.

As used herein, the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

ARTICLE TEN

Limits of Liability

A director of the corporation shall not be liable to the corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director, except that this Article Eleven does not eliminate or limit the liability of a director to the extent the director is found liable for:

- (a) a breach of a director's duty of loyalty to the corporation or its shareholders;
- (b) an act or omission not in good faith that constitutes a breach of duty of the director to the corporation or an act or omission that involves intentional misconduct or a knowing violation of the law;

- (c) a transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or
- (d) an act or omission for which the liability of a director is expressly provided by an applicable statute.

Neither the amendment nor repeal of this Article, nor the adoption of any provision of these Articles of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal, or adoption of any inconsistent provision. If the Texas Business Corporation Act or the Texas Miscellaneous Corporation Laws Act or any successor act thereto is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Texas Business Corporation Act or the Texas Miscellaneous Corporation Laws Act, or any successor act thereto, as so amended from time to time.

ARTICLE ELEVEN **Initial Registered Office and Agent**

The street address of the initial registered office of the corporation is 500 West Wall, Suite 400, Midland, Texas 79701, and the name of its initial registered agent at such address is David W. Pruitt.

ARTICLE TWELVE **Directors**

The initial Board of Directors shall consist of eight (8). The names and addresses of the persons who are to serve as the initial directors of the corporation until the first annual meeting of the shareholders or until their successor or successors are duly elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Russell Jones	2400 South County Road 11 Midland, TX 79701
S. D. Buchanan	Route 1, Box 439 Big Spring, TX 79720
Alfred J. Schwartz	HC-78, P.O. Box 50 Garden City, TX 79739

Jerry Hoelscher

HC-34 Box 118
Midland, TX 79706

Newell Tate

P.O. Box 71
Tarzan, TX 79783

Robert Holman

5750 CR 428
Colorado City, TX 79512

Jerry Swindell

P.O. Box 115
Celeste, TX 75423

David W. Pruitt

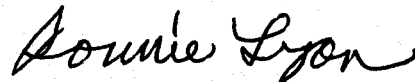
5001 Los Alamos
Midland, TX 79705

ARTICLE THIRTEEN

Incorporator

The name and address of the incorporator are Ronald W. Lyon, 4520 Texoma Parkway, Suite L-1, Sherman, Texas 75090.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of December, 1998.



Ronald W. Lyon, Incorporator

**ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF
CAP ROCK ENERGY CORPORATION**

Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation which amends Article Four thereof to provide limits on the voting rights with respect to the shares of authorized capital stock of the corporation.

ARTICLE I

The name of the corporation is Cap Rock Energy Corporation.

ARTICLE II

Article Four of the Articles of Incorporation of the corporation is hereby amended and restated to read as follows:

ARTICLE FOUR
Capital

The aggregate number of shares of capital stock that the corporation shall have authority to issue is 50,000,000. All such shares shall (i) be designated as "Common Stock"; (ii) be of the par value of one cent (\$.01) per share; (iii) be of the same class; (iv) entitle the record holder thereof to one vote per share, with the exception that the voting rights with respect to each share of Common Stock of the corporation held by a shareholder (including any "Affiliate" of a shareholder) in excess of ten percent (10%) of the outstanding Common Stock of the corporation shall be limited to one-one hundredth (1/100th) per share; and (v) have all of the other rights, privileges and limitations provided to shares of Common Stock of a corporation under the Texas Business Corporation Act, as amended from time to time. As used herein, (a) the term "Affiliate", as it relates to a shareholder, shall mean any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the shareholder; (b) the term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of another person, whether through the ownership of voting securities, by contract or otherwise; and (c) for purposes of this

Article Four, ownership, direct or indirect, of ten percent (10%) of more of the voting securities, partnership interests, or other voting interests in another person shall be deemed to constitute control of such person.

ARTICLE III

The amendment to the Articles of Incorporation of the corporation set forth above was adopted by the sole shareholder of the corporation on February 21, 2000 but is effective as of January 1, 1999.

ARTICLE IV

The number of shares of the corporation outstanding at the time of the adoption of the amendment to the Articles of Incorporation of the corporation set forth above was 1,000, and the number of shares entitled to vote on the amendment was 1,000.

ARTICLE V

The holder of all of the shares outstanding and entitled to vote on the amendment to the Articles of Incorporation of the corporation set forth above has signed a written consent adopting the amendment.

ARTICLE VI

The amendment to the Articles of Incorporation of the corporation set forth above does not effect a change in the amount of stated capital of the corporation.

CAP ROCK ENERGY CORPORATION

A handwritten signature in dark ink, appearing to read "David W. Pruitt", is written over a horizontal line.

David W. Pruitt, President

EXHIBIT B

CO-OP

ARTICLES OF INCORPORATION

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The State of Texas

Secretary of State

SEP. 11, 1995

RONNIE LYON--MCGOWEN & LYON
711 N. TRAVIS ST
SHERMAN ,TX 75090-4950

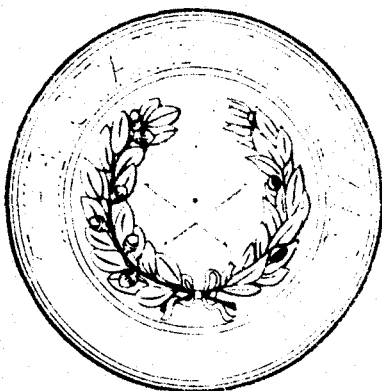
RE:
CAP ROCK ELECTRIC COOPERATIVE, INC.
CHARTER NUMBER 00075783-01

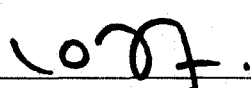
IT HAS BEEN OUR PLEASURE TO APPROVE AND PLACE ON RECORD YOUR RESTATED ARTICLES OF INCORPORATION. THE APPROPRIATE EVIDENCE IS ATTACHED FOR YOUR FILES, AND THE ORIGINAL HAS BEEN FILED IN THIS OFFICE.

PAYMENT OF THE FILING FEE IS ACKNOWLEDGED BY THIS LETTER.

IF WE CAN BE OF FURTHER SERVICE AT ANY TIME, PLEASE LET US KNOW.

VERY TRULY YOURS,




Antonio O. Garza, Jr., Secretary of State



The State of Texas
Secretary of State

**CERTIFICATE OF RESTATED ARTICLES
OF INCORPORATION**

OF

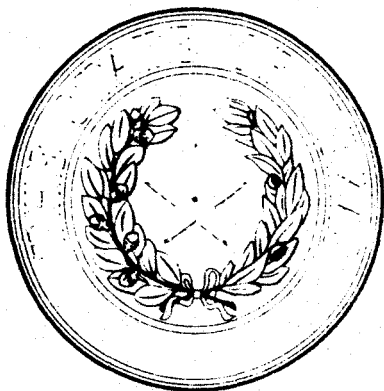
**CAP ROCK ELECTRIC COOPERATIVE, INC.
CHARTER NUMBER 00075783**

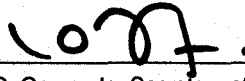
THE UNDERSIGNED, AS SECRETARY OF STATE OF THE STATE OF TEXAS,
HEREBY CERTIFIES THAT THE ATTACHED RESTATED ARTICLES OF INCORPORATION
FOR THE ABOVE NAMED CORPORATION HAVE BEEN RECEIVED IN THIS OFFICE AND
ARE FOUND TO CONFORM TO LAW.

ACCORDINGLY THE UNDERSIGNED, AS SECRETARY OF STATE, AND BY VIRTUE
OF THE AUTHORITY VESTED IN THE SECRETARY BY LAW, HEREBY ISSUES THIS
CERTIFICATE OF RESTATED ARTICLES OF INCORPORATION.

DATED AUG. 30, 1995

EFFECTIVE AUG. 30, 1995




Antonio O. Garza, Jr., Secretary of State

**RESTATED AND AMENDED ARTICLES OF INCORPORATION
OF CAP ROCK ELECTRIC COOPERATIVE, INC.**

AUG 30 1995

Corporations Section

Cap Rock Electric Cooperative, Inc., pursuant to the provisions of Section 26 of Article 1528b, Vernon's Annotated Civil Statutes of the State of Texas, as amended (Electric Cooperative Corporation Act), the undersigned Corporation adopts these Restated Articles of Incorporation which accurately copy the Articles of Incorporation and all amendments in effect to date. The Articles of Incorporation, as restated and amended by these Restated Articles of Incorporation, are set forth below and contain no other changes in any provision.

ARTICLE I

The name of the Corporation is CAP ROCK ELECTRIC COOPERATIVE, INC.

ARTICLE II

The following Amendments to the Articles of Incorporation were adopted by the members of the Corporation on July 6, 1995, at a meeting attended by not less than five percent (5%) of the Cooperative's members:

Article IV of the Articles of Incorporation is hereby amended to read as follows:

NUMBER OF DIRECTORS

The total number of directors to be elected in any twelve (12) consecutive months at all official Meetings of Members shall be not more than one-third (1/3) of the total number of Directors currently serving on the Board of Directors, plus one.

Article VIII of the Articles of Incorporation is hereby amended to read as follows:

Disposition of Property

Section 1. Except as provided in Section 2 of this Article VIII, the Corporation may not sell, mortgage, lease as Lessor, lease-sell, or otherwise dispose of or encumber any of its property other than:

- (a) property which in the judgment of the Board of Directors neither is nor will be necessary or useful in operating and maintaining the Corporation's system and facilities; provided, however, that all sales of such property shall not in any one (1) year exceed in value twenty per centum

(20%) of the value of all of the property of the Corporation;

(b) services of all kinds, including electric energy; and

(c) personal property acquired for resale; unless such sale, mortgage, lease, lease-sale or other disposition or encumbrance is authorized by the affirmative vote of at least two-thirds (2/3) of the total members of the Corporation at a meeting at which a quorum of not less than one-third (1/3) of the total members are present in person or represented by proxy, if such voting is provided for in accordance with the Bylaws, and the notice of such proposed transaction shall have been contained in the notice of the meeting; PROVIDED HOWEVER, that notwithstanding anything herein contained, the Board of Directors, without further authorization by the members, shall have full power and authority to borrow money from the United States of America, or any agency or instrumentality thereof, or from any national financing institution organized on a cooperative plan for the purpose of financing its member's programs, projects and undertakings and in which the Corporation holds membership, or from any other financing or lending institution of any kind whatsoever, without limitation, including but not limited to Banks, Insurance Companies, Leasing Companies, Bond Companies, and Investment Banking Firms, and in connection with such borrowing to authorize the making and issuance of bonds, notes or other evidences of indebtedness and, after indebtedness, or to authorize the Corporation to use alternative methods of financing such as sale-leaseback agreements, private placement borrowing, stock sales or other types of financing arrangements and, to secure the payment thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed of deeds of trust upon, or the pledging or encumberancing of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Corporation, wherever situated and whether acquired or to be acquired, all upon such terms and conditions as the Board of Directors shall determine.

Section 2. If such a sale, mortgage, lease as Lessor, lease-sale, exchange, merger, consolidation, combination or other disposition is solely to one or more electric cooperatives organized by the board of directors of this Corporation and operating under the Texas Electric Cooperative Corporation Act or to any corporation organized by the board of directors of this Corporation or for the purpose of becoming a successor to this Corporation or its assignee, transferee, mortgagee, or grantee, or to any other corporation or entity if the Board of Directors has voted in favor of such sale, mortgage, lease as Lessor, lease-sale, exchange, merger, consolidation, combination or other disposition and such sale is therefore not a "hostile" sale, the provisions of this Article VIII, Sections 1 and 3, shall not apply. If such sale, mortgage, lease, lease-sale, or other disposition or encumbrance is solely to one or more other electric cooperatives,

other than one organized by the Corporation's board of directors as described above, organized and operating under the Texas Electric Cooperative Corporation Act, or if the proposal is to consolidate the Corporation with one or more other electric cooperatives pursuant to Section 27 of Article 1528(b) of that Act, the quorum requirement for the member meeting at which such proposed transaction is to be considered and acted upon shall be as established by Article IX of these Articles of Incorporation, and the number of percentage of the Cooperative's members who must affirmatively vote for the transaction in order to authorize it shall be as provided in the Corporation's Bylaws or in that Act.

Section 3. Neither this Section 3 of Article VIII nor the requirements in Section 1 of this Article for a quorum of not less than one-third (1/3) of the total members are present in person or represented by proxy, if such voting is provided for in accordance with the Bylaws, and for an affirmative vote of at least two-thirds (2/3) of the Corporation's total members in order to approve the proposed transaction may be amended except at a member meeting at which at least a like quorum is present in person and at least a like number of affirmative votes is cast in favor of such amendment.

Article IX of the Articles of Incorporation is hereby amended to read as follows:

QUORUM

Except as provided in Article VIII of these Articles of Incorporation, business may not be transacted at any meeting of the members unless there are present in person or represented by proxy, if such voting is provided for in accordance with the Bylaws, twenty percent (20%) of the Cooperative's members which amount shall constitute a quorum. If less than a quorum is present at any meeting, a majority of those present in person or represented by proxy, if such voting is provided for in accordance with the Bylaws, may adjourn the meeting from time to time without further notice.

ARTICLE III

The number of members of the corporation present in person at the time of the adoption of the foregoing amendments to the Articles of Incorporation was 510. The number of members represented by proxy at the time of such adoption was 3,333. There were 3,285 votes by proxy for the amendments representing 99.67% of all proxies voted and a majority of those persons present, in person, voting for the amendments.

ARTICLE IV

Each statement made by these Restated Article of Incorporation has been effected in conformity with the provisions of Article 1528b of Vernon's Annotated Civil Statutes of the State of Texas, as amended. Each amendment contained in these Restated Articles of Incorporation was adopted by the members of the corporation on July 6, 1995.

ARTICLE V

The Articles of Incorporation and all amendments and supplements to them are superseded by the following Restated Articles of Incorporation, which accurately copy the entire text as well as incorporate the amendments set forth above:

ARTICLES OF INCORPORATION OF CAP ROCK ELECTRIC COOPERATIVE, INC.

STATE OF TEXAS §
 §
COUNTY OF HOWARD §

KNOW ALL MEN BY THESE PRESENTS:

We, the undersigned, being natural persons of the age of twenty-one years or more and citizens and residents of the State of Texas, for the purpose of forming a corporation under the "Electric Cooperative Corporation Act" of the State of Texas, do hereby adopt the following Articles of Incorporation:

ARTICLE I

NAME

The name of the Corporation is Cap Rock Electric Cooperative, Inc.

ARTICLE II

PURPOSES, RIGHTS and POWERS

The purposes for which the Corporation is organized are all of those purposes set forth in Section 3 of Article 1528b, Vernon's Annotated Civil Statutes of the State of Texas, as amended or as may hereafter be amended, and to have and to exercise all rights and powers that are now or may hereafter be granted to an electric cooperative corporation by law.

ARTICLE III

ORIGINAL INCORPORATORS

The names and addresses of the original incorporators who served as Directors and managed the affairs of the Corporation until its first annual meeting of the members, or until their successors were elected and qualified, were as follows:

Glenn Cantrell	Big Spring, Texas
Miss Arah Phillips	Big Spring, Texas
Reece Adams	Knott, Texas
Mrs. Lee Castle	Rt. 1, Ackerly, Texas
Mrs. W.L. Clements	Starr Rt., Stanton, Texas
H. W. Deavenport	Lenorah, Texas
J. A. Jones	Tarzan, Texas
C. F. Gray	Stanton, Texas
Riggs Shepperd	Stanton, Texas

ARTICLE IV

NUMBER OF DIRECTORS

The total number of directors to be elected in any twelve (12) consecutive months at all official Meetings of Members shall be not more than one-third (1/3) of the total number of Directors currently serving on the Board of Directors, plus one.

ARTICLE V

PRINCIPAL OFFICE and REGISTERED AGENT

The address of the principal offices of the corporation shall be 500 W. Wall, Suite 400, Midland, Midland County, Texas, 79701, and the name and address of its agent upon whom process may be served is David W. Pruitt of the same business address.

ARTICLE VI

DURATION

The duration of the Corporation shall be perpetual.

ARTICLE VII

MEMBERSHIP

The terms and conditions upon which person shall be admitted to and retain membership in the Corporation shall be reserved to the Directors as determined by the Bylaws.

ARTICLE VIII

Disposition of Property

Section 1. Except as provided in Section 2 of this Article VIII, the Corporation may not sell, mortgage, lease as Lessor, lease-sell, or otherwise dispose of or encumber any of its property other than:

(a) property which in the judgment of the Board of Directors neither is nor will be necessary or useful in operating and maintaining the Corporation's system and facilities; provided, however, that all sales of such property shall not in any one (1) year exceed in value twenty per centum (20%) of the value of all of the property of the Corporation;

(b) services of all kinds, including electric energy; and

(c) personal property acquired for resale; unless such sale, mortgage, lease, lease-sale or other disposition or encumbrance is authorized by the affirmative vote of at least two-thirds (2/3) of the total members of the Corporation at a meeting at which a quorum of not less than one-third (1/3) of the total members are present in person or represented by proxy, if such voting is provided for in accordance with the Bylaws, and the notice of such proposed transaction shall have been contained in the notice of the meeting; PROVIDED HOWEVER, that notwithstanding anything herein contained, the Board of Directors, without further authorization by the members, shall have full power and authority to borrow money from the United States of America, or any agency or instrumentality thereof, or from any national financing institution organized on a cooperative plan for the purpose of financing its member's programs, projects and undertakings and in which the Corporation holds membership, or from any other financing or lending institution of any kind whatsoever, without limitation, including but not limited to Banks, Insurance Companies, Leasing Companies, Bond Companies, and Investment Banking Firms, and in connection with such borrowing to authorize the making and issuance of bonds, notes or other evidences of indebtedness and, after indebtedness, or to authorize the Corporation to use alternative methods of financing such as sale-leaseback agreements, private placement borrowing, stock sales or other types of financing arrangements and, to secure the payment thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed of deeds of trust upon, or the pledging or encumberancing of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Corporation, wherever situated and whether acquired or to be acquired, all upon such terms and conditions as the Board of Directors shall determine.

Section 2. If such a sale, mortgage, lease as Lessor, lease-sale, exchange, merger, consolidation, combination or other disposition is solely to one or more electric cooperatives organized by the board of directors of this Corporation and operating under the Texas Electric Cooperative Corporation Act or to any corporation organized by the board of directors of this Corporation or for the purpose of becoming a successor to this Corporation or its assignee, transferee, mortgagee, or grantee, or to any other corporation or entity if the Board of Directors has voted in favor of such sale, mortgage, lease as Lessor, lease-sale, exchange, merger, consolidation, combination or other disposition and such sale is therefore not a "hostile" sale, the provisions of this Article VIII, Sections 1 and 3, shall not apply. If such sale, mortgage, lease, lease-sale, or other disposition or encumbrance is solely to one or more other electric cooperatives, other than one organized by the Corporation's board of directors as described above, organized and operating under the Texas Electric Cooperative Corporation Act, or if the proposal is to consolidate the Corporation with one or more other electric cooperatives pursuant to Section 27 of Article 1528(b) of that Act, the quorum requirement for the member meeting at which such proposed transaction is to be considered and acted upon shall be as established by Article IX of these Articles of Incorporation, and the number of percentage of the Cooperative's members who must affirmatively vote for the transaction in order to authorize it shall be as provided in the Corporation's Bylaws or in that Act.

Section 3. Neither this Section 3 of Article VIII nor the requirements in Section 1 of this Article for a quorum of not less than one-third (1/3) of the total members are present in person or represented by proxy, if such voting is provided for in accordance with the Bylaws, and for an affirmative vote of at least two-thirds (2/3) of the Corporation's total members in order to approve the proposed transaction may be amended except at a member meeting at which at least a like quorum is present in person and at least a like number of affirmative votes is cast in favor of such amendment.

ARTICLE IX

QUORUM

Except as provided in Article VIII of these Articles of Incorporation, business may not be transacted at any meeting of the members unless there are present in person or represented by proxy, if such voting is provided for in accordance with the Bylaws, twenty percent (20%) of the Cooperative's members which amount shall constitute a quorum. If less than a quorum is present at any meeting, a majority of those present in person or represented by proxy, if such voting is provided for in accordance with the

Bylaws, may adjourn the meeting from time to time without further notice.

ARTICLE X

BYLAWS AMENDMENTS

The Bylaws of the Corporation may be altered, amended, or repealed by the Board of Directors in such manner as is provided in the Bylaws.

ARTICLE XI

DIRECTOR LIABILITY

Section 1. Directors of the Corporation shall not be liable to the Corporation or its members for monetary damages for an act or omission in the Director's capacity as a Director except that this Article does not eliminate or limit the liability of a Director for:

- (1) a breach of a Director's duty of loyalty to the Corporation or its shareholders or members;
- (2) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law;
- (3) a transaction from which a Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director's office;
- (4) an act or omission for which the liability of a Director is expressly provided for by statute; or
- (5) an act related to an unlawful stock repurchase or payment of a dividend.

Section 2. This Article XI applies only to an act or omission occurring on or after August 31, 1987.

To certify which, and to certify to the lawful adoption of the above amendments approved by the members on July 6, 1995, CAP ROCK ELECTRIC COOPERATIVE, INC., has caused the Restated Articles of Incorporation to be signed by the Chairman of the Board of Directors and caused the same to be attested and its corporate seal to be affixed by its Secretary, both of them being thereto duly authorized, this 22nd day of August, 1995.

Cap Rock Electric Cooperative, Inc.

By:

Russell E. Jones

Russell E. Jones

Chairman of the Board of Directors

ATTEST:

Alfred J. Schwartz
Alfred J. Schwartz, Secretary